

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF LOUISIANA**

LUKE FONTANA, *In-Persona*

No. \_\_\_\_\_

Plaintiff,

v.

MAYOR LATOYA CANTRELL

CITY OF NEW ORLEANS

Defendant.

**PLAINTIFF’S COMPLAINT FOR A TEMPORARY RESTRAINING ORDER AND**  
**PRELIMINARY INJUNCTION**

1. The Petitioner, LUKE FONTANA *in-persona* respectfully requests this Honorable Court to enter an emergency temporary restraining order and/or a preliminary injunction from this Honorable Court enjoining Respondent from enforcement action.
2. Plaintiffs seek a declaration that the enforcement of the “Mardi Gras Restrictions” February 7, 2021 to prohibit his peaceful First Amendment activity in Louis Armstrong Park and Jackson Square, and Bourbon Street between Canal St. and Dumaine St.

violates the First and Fourteenth Amendments as set forth in this Complaint; a temporary and permanent injunction enjoining the challenged enforcement of “Mardi Gras Restrictions” as set forth in this Complaint

3. MAYOR LATOYA CANTRELL, (“Mayor”), is the Mayor for the City of New Orleans, Louisiana. Mayor has issued Mardi Gras Restriction Orders on Friday, February 4, 2021. These are in addition to the Modified Phase 2 order from January 29, 2021. The Mardi Gras Restrictions closed the parks and roads throughout the French Quarter during Mardi Gras season. These closures are from Friday, February 12, 2021 at 6:00AM until Wednesday, February 17, 2021 at 6:00AM. These are the latest of the Mayor’s COVID-19 restrictions. These restrictions are specifically for Mardi Gras.
4. Mayor has closed Louis Armstrong Park, Washington Square, and Jackson Square under these Mardi Gras Restrictions. Mayor has limited groups outdoors groups to less than 25 people.
5. Plaintiff, Luke Fontana, a New Orleans resident and President of Rise NOLA Inc, a non-profit focusing on the betterment of the economic and social issues afflicting the City of New Orleans. Plaintiff is appearing in-persona. Plaintiff is a candidate in the 2021 Election for New Orleans City Council. *Plaintiff’s Legal Bio Exhibit I*
6. Plaintiff has a Protest Parade and 33 Minute Prayer Vigil on February 16, 2021 Mardi Gras Day. This demonstration is in protest of the destructive economic restrictions and poor leadership of Mayor Cantrell.
7. Mayor has threatened criminal penalties of fines and arrests if her orders are violated. Plaintiff seeks injunctive relief enjoining the executive order and a temporary restraining order requiring the defendant to allow Mr. Fontana’s protest to take place on Tuesday, February 16, 2021 without threat of enforcement action.

### **PARTIES**

8. Plaintiff, LUKE FONTANA is a resident of New Orleans, Louisiana
9. Defendant, MAYOR LATOYA CANTRELL (“Mayor”) is sued in this lawsuit only in her official capacity as the Mayor of the City of New Orleans.

10. Defendant, LATOYA CANTRELL is the duly elected Mayor of the City of New Orleans, was and is a constitutional political officer and elected official of the City of New Orleans.
11. Pursuant to her authority as Mayor, Defendant Mayor issued “Mardi Gras Restrictions.”
12. Defendant, CITY OF NEW ORLEANS (“City”) is a municipal corporation with the State of Louisiana
13. The City and its officials, including its police officers, are responsible for enforcing local and state laws, including “Mardi Gras Restrictions.”
14. Anyone not following these requirements may be found in violation of Chapter 54 Section 501 of the New Orleans Criminal Code, which may result in a misdemeanor citation and a fine up to \$500 or six months in jail.

### **FACTS**

15. On February 4, 2021 Mayor Cantrell issued a series of restrictions for Mardi Gras Day, February 16, 2021 and the days leading up to Mardi Gras. The Mayor’s executive order prohibits “Parades, Second Lines, and other gatherings.”
16. The February 4, 2021 closes the following streets which are part of Plaintiff’s protest route, Bourbon St. between, Canal St and Dumaine St; Frenchman St between Esplanade Ave and Royal St; and Decatur St between Duamine St. and Toulouse St. “Individuals are prohibited from loitering on the streets listed below. Individuals that are residing in a residence or hotel on that street, employees that work in businesses on that street, or individuals that are patrons of restaurants or business establishments on the street may be allowed to enter these areas only to permit access to residences and businesses. Travel in these areas for any other reason will be prohibited.”
17. Plaintiff is deeply concerned about the path of destruction the Mayor is leading the City and its citizens. In particular, Plaintiff harbors serious concerns about how defendants are affecting the economic prosperity and cultural fabric of this City.

**FIRST CLAIM FOR RELIEF**  
**FREDOM OF SPEECH- FIRST AMMENDMENT**

18. Plaintiffs hereby incorporate by reference all stated paragraphs.
19. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of his right to freedom of speech in violation of the Free Speech Clause of the First Amendment as applied to the states and his political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.
20. Defendants' enforcement of "Mardi Gras Restrictions" to restrict the expressive religious activity of Plaintiff's 33 Minute Prayer Vigil at the entrance to Saint Louis Cathedral in Jackson Square violates the Free Speech Clause of the First Amendment.
21. "Mardi Gras Restrictions" as applied to Plaintiffs' expressive religious activity as set forth in this Complaint violates the First Amendment.
22. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment as set forth in this Complaint, Plaintiff will suffer irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief against all Defendants.

**SECOND CLAIM FOR RELIEF**

**(Free Exercise of Religion—First Amendment)**

23. Plaintiffs hereby incorporate by reference all stated paragraphs.
24. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of his right to religious exercise in violation of the Free Exercise

Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

25. Plaintiffs' expressive religious activity as set forth in this Complaint is protected by both the Free Speech and Free Exercise Clauses of the First Amendment.
26. As a direct and proximate result of Defendants' violation of the Free Exercise Clause of the First Amendment as set forth in this Complaint, Plaintiff will suffer irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief against all Defendants.

### **THIRD CLAIM FOR RELIEF**

#### **(Equal Protection—Fourteenth Amendment)**

27. Plaintiffs hereby incorporate by reference all stated paragraphs.
28. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.
29. Defendants' enforcement of "Mardi Gras Restrictions" to restrict peaceful public assembly and religious activity of Plaintiffs on public streets, public parks, and Jackson Square adjacent to Saint Louis Cathedral located within the City New Orleans, as set forth in this Complaint, violates the Equal Protection Clause of the Fourteenth Amendment.
30. By denying Plaintiff access to public fora to engage in his expressive religious and freedom of speech activities, as set forth in this Complaint, Defendants have deprived Plaintiffs of the equal protection of the law.
31. As set forth in the Complaint, "Mardi Gras Restrictions provides exceptions for residents and visitors who walk or drive to patronize a retail shop, dine in restaurant, stay

at a hotel, or reside on those same streets throughout New Orleans, but the order punishes the Plaintiff for using the very same public streets for exercising his constitutional rights. By granting exceptions for non-religious conduct but punishing similar religiously motivated conduct, “Mardi Gras Restrictions violates the Equal Protection Clause of the Fourteenth Amendment.

32. As a direct and proximate result of Defendants’ violation of the equal protection guarantee of the Fourteenth Amendment as set forth in this Complaint, Plaintiff will suffer irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief against all Defendants.

### **CAUSE OF ACTION**

33. The defendants’ actions violate the plaintiff’s rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

### **JURISDICTION AND VENUE**

34. This Court has subject-matter jurisdiction over the plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3)–(4).
35. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) in that the plaintiff’s claims arise in the Eastern District of Louisiana.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this Court:

- a) Assume jurisdiction over this matter
- b) Declare the defendants' actions violate the First Amendment to the United States Constitution
- c) Temporarily restrain the defendants from enforcing their public gatherings ban against the plaintiff's event scheduled for February 16, 2021.

Respectfully Submitted,

Luke Fontana

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Luke Fontana, *In-Persona*

1827 Burgundy St

New Orleans, LA 70116

(504)-638-1528

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF LOUISIANA**

LUKE FONTANA, *In-Persona*

No. \_\_\_\_\_

Plaintiff,

v.

MAYOR LATOYA CANTRELL

CITY OF NEW ORLEANS

Defendant.

**ORDER GRANTING EMERGENCY APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**IT IS ORDERED** that the plaintiff's Motion for Emergency Application for Temporary Restraining Order and Preliminary Injunction is **GRANTED** on the \_\_\_\_ day of \_\_\_\_\_, 2021

New Orleans, Louisiana this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Judge

**EXHIBIT**

**I**

**ART & LEGAL BIO of PLAINTIFF**

## **Legal Bio**

**Luke Fontana, Attorney At-Law, started his law practice as a civil rights attorney working as a staff attorney in the Algiers projects for New Orleans Legal Assistance Corporation in 1968 – 1970. Luke is a member of Louisiana Bar Association.**

**He was responsible for the desegregation of the State Industrial School for Colored Youth notoriously known as Scotlandville. This lawsuit not only resulted in the desegregation of the juvenile institutions in the state of Louisiana in 1968 – 1969, but also resulted in the equalization of funding by the Louisiana State Legislature to the juvenile institutions in the state of Louisiana.**

**In hearings before United States District Judge Alvin Rubin, Mr. Fontana described Scotlandville as a brutal prison. And the white juvenile institutions as country clubs.**

**Mr. Fontana became well known as a penal reform attorney. In a class action lawsuit filed in 1969 against New Orleans Mayor Victor Schiro, Mr. Fontana represented, all prisoners in the notorious Orleans Parish Prison, alleging violation of the United States Constitution prohibition against cruel and unusual punishment. This was the first penal lawsuit, appointing a Special Master, and was written up by the American Bar Association.**

**In this class action lawsuit, United States District Court Judge Herbert Christenberry ruled in Mr. Fontana's favor, and ordered the city of New Orleans to improve the conditions of Orleans Parish prison, or face a contempt of court citation Mr. Fontana litigated this case for a period of over 12 years, filing numerous contempt of court violations**

**against every New Orleans mayor, from Mayor Moon Landrieu to Mayor Dutch Morial.**

**Mr. Fontana was also one of the attorneys involved in the class action lawsuit against the Louisiana State Prison, known as Angola, alleging violations of the United States Constitution for cruel and unusual punishment, and seeking relief from these elements of torture.**

**The United States District Court Judge in Baton Rouge granted Mr. Fontana's plaintiffs an injunction, prohibiting the state of Louisiana from inflicting cruel and unusual punishment on the prisoners of Angola the majority of whom were African-Americans.**

**Mr. Fontana was well known for his representation of New Orleans police brutality cases against African-Americans. His most famous case was his handling of the Charles Cheatham police killing of Mr. Cheatham on Bourbon Street in April of 1975 by New Orleans police officer Stephen Reboul.**

**The jury in Louisiana Civil District Court in New Orleans, Judge Tom Early presiding, granted Sheryl Cheatham, widow of Charles Cheatham, and her young son, an award of \$619,000**

**This was the first time any large award was granted against the New Orleans Police Department for killing an African-American. It was the first time in New Orleans, the NOPD blue line had ever been cracked. Mr. Fontana played a key part in cracking this case. At the last second on the second day of the jury trial, Mr. Fontana was able to produce Ronnie Lee Watson, a key witness to the cold blooded murder shooting of Charles Cheatham by Stephen Reboul.**

**By his own testimony, Ronnie Lee Watson testified that members of the NOPD threatened to kill him, if he was ever discovered again in the French Quarter of New Orleans**

**One witness that repeated the police killing storyline was found dead in Lake Pontchartrain 7 days later with five bullet holes in his head.**

**In spite of all these obstacles, Fontana pulled Ronnie Lee Watson out of a hat, and broke the NOPD BLUE LINE.**

**This award of \$619,000 was reversed in the Louisiana. Fourth Circuit Court of Appeal, Judge Peter Beer residing.**

**Peter Beer was an ex New Orleans city councilman, and it became evident his decision was likely to protect the purse strings of the city of New Orleans, whom he once represented as a city councilman.**

**The Louisiana State Supreme Court, Judge Pascal Calogero presiding, reversed this unfair and prejudicial decision of Peter Beer's Fourth Circuit Court of Appeals**

**After appeals, writs to Louisiana State Supreme Court, accumulating legal interest, the final judgment in the Charles Cheatham case came out to \$800,000, which the taxpayers of New Orleans were obligated to pay.**

**In spite of this, Stephan Reboul remained on the New Orleans Police Department under the administration of Mayor Ernest Dutch Morial, the first Afro American elected mayor of the city of New Orleans.**

**NOPD officer, and now accused killer cop Stephen Reboul, was part of the New Orleans Police Department raid that killed four Afro American Algiers residents. This raid is known as the Algiers massacre. Steven Reboul shot Cheryl Singleton, while she was in the bathtub with her 10 year old child nearby.**

**After retiring for several years, Mr. Fontana is presently renewing his license to practice law under the jurisdiction of the Louisiana State Bar Association.**

**Mr Fontana Has come out of retirement to not only practice law. but also run for New Orleans city council against Kristin Palmer District A.**

**[www.openthedome.com](http://www.openthedome.com).**

**Luke Fontana**

**[www.lukefontana.com](http://www.lukefontana.com)**

**[www.lukefontananeworleansblog.com](http://www.lukefontananeworleansblog.com)**

**[lfproductionsbmi@gmail.com](mailto:lfproductionsbmi@gmail.com)**

**Phone 504 638 1528**

**God bless** 

**Lucca** 



**Luke Fontana**  
**Attorney at Law**



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[www.lukefontana.com](http://www.lukefontana.com)

**"Together, We Can Win, Justice Again"**

*-Luke Fontana*

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**504-638-1528**

[www.lukefontana.com](http://www.lukefontana.com)



**OPEN THE DOME**  
**VOTE**  
**LUKE FONTANA**

**ATTORNEY AT LAW**

**REMOVE KRISTIN PALMER!**

[www.openthedome.com](http://www.openthedome.com)

**#OPENTHEDOME**



## **ART BIO**

### **LUKE FONTANA NEW ORLEANS VAIL**

**Luke Fontana is an internationally known New Orleans Historic Jazz photographer, Abstract Artist, Attorney at Law, Producer- Environmental Activist, and currently resides in Historic Faubourg Marigny District of New Orleans & in the Rockies, within the Gore Creek Mountain Range, White River National Forest, Vail, Colorado.**

**Mr. Fontana describes himself as a mixture between Paul Strand and Walker Evans w/taste of Henri Cartier Bresson.**

**Luke Fontana received a Photography Fellowship Grant from National Endowment of Arts, Wash DC to document Blacks in rural south during early 1970's.**

**Lucca titled his 1st work:**

**"VALLEY OF THE PECAN GATHERERS"**

**Luke Fontana considers this 1st project funded by a Photography Fellowship Grant from National Endowment of Arts to be his best work.**

**Indeed Luke Fontana's Artist enhanced photography on canvas of his "Valley of Pecan Gatherers" is now being viewed & sold internationally thru French website Artsper. Also, several of his New Orleans Jazz original works of art are being shown internationally.**

**In New Orleans Luke Fontana has been featured at the following:**

**Simone Stern Art Gallery  
333 Royal Street**

**American Italian Cultural Center**

**New Orleans Art Center  
3330 St Claude Av**

**New Orleans Auction Art Gallery  
333 St Joseph Street**

**Rampart Art Gallery**

**Frenchman Street Book Store**

**Lou Sahuc Photo Gallery  
Jackson Square**

**Neal Auction Gallery**

**In Vail Colorado, Luke Fontana's Artist enhanced photography on canvas of New Orleans Jazz musicians is featured at Ein Prosit bar/restaurant/live music, Avon Colorado.**

**After 3 years photographing majestic spectral beauty of Gore Creek White Mountain National Forest mountain range, Luke Fontana is ready to pursue a Vail, Colorado Gallery.**

**Luke "Lucca" Fontana announced 3 days ago his candidacy for New Orleans City Council member to remove incumbent Kristin Palmer District A.**

**Mr. Fontana's main campaign platform:**

**"OPEN NEW ORLEANS"**

**<https://www.openneworleans.com/>**

**On Oct 13, 2020, Mr. Fontana announced his campaign on 13 different platforms.**

**In 33 days, Luke Fontana working with info obtained on internet from Robert Kennedy Jr, will expose Bill Gates- Dr. Anthony Fauci's Plandemic pharma ploy plan for MANDATORY vaccinations, implantation Bill Gates microchips.**

**Bill Gates is buying off the WHO, CDC, & the criminal Medical Mafia Pharma industry injecting 74 aluminum mercury poisonous vaccines into bodies of infants, causing a massive PANDEMIC of diseases & deaths to countless millions. All of this by courtesy of the Criminal Mafia Medical pharma industrial empire spearheaded by Bill Gates & Dr. Anthony Fauci.**

**Mr. Fontana was a featured photographer in New Orleans' city wide PhotoNOLA 2017 Exhibit.**

**His photographic promotion is featured on 72,000 NOPSI Hotel-New Orleans 2017 edition brochures.**

**Mr. Fontana's vast body of works has been well received at New Orleans Auction Art Gallery.**

**Recognized as a New Orleans jazz photographer, who specializes in black & white silver gelatin images of the NOLA culture & Louisiana rural communities.**

**Luke Fontana's photographs have been selected as part of the permanent collection of the Louisiana State Museum Jazz Collection & The Historic New Orleans Collection.**

**Luke Fontana is the Author of 2 Books:**

**Save Our Wetlands**

**New Orleans and her Jazz Funeral Marching Bands**

**As a Producer:**

**Luke Fontana has received 3 New Orleans Municipal Endowment Grants to produce 13/30 min TV programs for Cox Cable Television titled:**

**Save our Wetlands Eco News.**

**Luke Fontana received 2 grants from New Orleans Jazz Heritage Foundation to produce 13min film titled " MERCY ON THE BAYOU"**

**[www.mercyonthebayou.com](http://www.mercyonthebayou.com)**

**Luke Fontana Produced 2 Vinyl Record Albums:**

**1, DOWN IN LOUISIANA featuring Trio Trinity:  
BUTCH MUDBONE**

**JEFF DAWSON  
LUKE FONTANA**

## **2. BAYOU BONFOUCA BLUES**

**This vinyl features Louisiana Music Hall of Fame Blue's guitarist ERNIE VINCENT.**

**[www.bayoubonfoucablues.com](http://www.bayoubonfoucablues.com)**

**All of Luke's music can be listened to from here:**

**<https://lukefontana.com/music/>**

**Luke's Videos can viewed be here:**

**<https://lukefontana.com/music/luke-fontana-videos/>**

**Other Audio CDs Produced by Luke Fontana Include:**

**LUCA GOES SOLO**



**NEW ORLEANS 2ND LINE**



### **Further Luke Fontana Productions:**

#### **“SAVE OUR WETLANDS”**

**Winner of the Film Festival 16MM Cindy Film Festival Award**

#### **“JAZZ FUNERAL FOR DEMOCRACY”**

**Winner of the Film Festival Awards from Atlanta to Toronto**

#### **“STOP KILLING THE CHILDREN”**

**A 13MM protest film against Skull & Bones President George H W. Bush’s \$3 trillion \$\$\$ criminal invasion of Iraq.**

#### **“ECO MARDI GRAS”**

**A 50 minute film directed by Hollywood Director, John Schindler, featuring a New Orleans’ Mardi Gras with an environmental twist. In this classic film, Aerosmith sings “Voodoo Medicine Man.”**

### **3 New Orleans Jazz Funerals:**

**Jazz Funerals of these Legends:**

**Tuba Fats  
Louis Nelson  
Alvin Baptiste**

**2 Protest Demonstrations against the Iraq invasion held in  
Congo Square**

Luke Fontana Productions has many items for sale on his website [lukefontana.com](http://lukefontana.com) and “MAKE MUSIC NOT WAR” items such as t-shirts, aprons, and tote bags

**Anti-Bill Gates Posters**

Individually signed limited edition of 25

\$30 + \$3= \$33 net costs

<https://lukefontana.com/product-category/art/>

Phone 504-638-1528

[www.lukefontana.com](http://www.lukefontana.com)

[www.mercyonthebayou.com](http://www.mercyonthebayou.com)

[www.bayoubonfoucablues.com](http://www.bayoubonfoucablues.com)

<https://open.spotify.com/artist/4fA4J30FeRuA4YfOhQ0tuB>

#OPENNOLA

#OPENNEWORLEANS

God bless 

Luke Fontana

Attorney at Law

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Phone 504 638 1528

LUCCA 

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF LOUISIANA**

LUKE FONTANA, *In-Persona*

No. \_\_\_\_\_

Plaintiff,

v.

MAYOR LATOYA CANTRELL

CITY OF NEW ORLEANS

Defendant.

**PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER**  
**AND PRELIMINARY INJUNCTION**

COMES NOW, Plaintiff, LUKE FONTANA, *in-persona* who moves this Court pursuant to Fed R. Civ. P. 65 for the immediate issuance of a temporary restraining order, followed by the issuance of a preliminary injunction in this cause, enjoining Defendants Mayor LaToya Cantrell and the City of New Orleans from enforcing “Mardi Gras Restrictions” affecting the closure of Jackson Square, Louis Armstrong Park, and the use of Bourbon Street for February 16, 2021. Plaintiff requests that the defendants’ actions violate the First and Fourteenth Amendment of the United States Constitution. Plaintiff also requests that the Court enjoin Defendants Mayor LaToya Cantrell and the City of New Orleans from the use of legal process to prosecute plaintiff for violating “Mardi Gras Restrictions” under Chapter 54 Section 501 of the New Orleans

Criminal Code. Plaintiff requests that the Court grant this relief for the reasons set forth in the accompanying memorandum in support, which is incorporated herein by reference.

WHEREFORE, Plaintiff, Luke Fontana, prays that a Temporary Restraining Order be entered immediately, followed by the issuance of a preliminary injunction, enjoining Defendants from violating First and Fourteenth Amendments of the United States Constitution.

Respectfully Submitted,

Luke Fontana

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Luke Fontana, *In-Persona*

1827 Burgundy St

New Orleans, LA 70116

(504)-638-1528

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

LUKE FONTANA, *In-Persona*

No. \_\_\_\_\_

Plaintiff,

v.

MAYOR LATOYA CANTRELL

CITY OF NEW ORLEANS

Defendant.

**ORDER GRANTING EMERGENCY APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**IT IS ORDERED** that the plaintiff's Motion for Emergency Application for Temporary Restraining Order and Preliminary Injunction is **GRANTED** on the \_\_\_\_ day of \_\_\_\_\_, 2021

New Orleans, Louisiana this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Judge

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF LOUISIANA**

LUKE FONTANA, *In-Persona*

No. \_\_\_\_\_

Plaintiff,

v.

MAYOR LATOYA CANTRELL

CITY OF NEW ORLEANS

Defendant.

**MEMORANDUM IN SUPPORT OF**  
**PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR**  
**PRELIMINARY INJUNCTION**

**INTRODUCTION**

Plaintiff Luke Fontana, a New Orleans resident and President of Rise NOLA Inc, a non-profit focusing on the betterment of the economic and social issues afflicting the City of New Orleans. Plaintiff is appearing in-persona. Plaintiff is a candidate in the 2021. Election for New Orleans City Council. MAYOR LATOYA CANTRELL, (“Mayor”), is the Mayor for the City of New Orleans, Louisiana. Mayor has issued Mardi Gras

Restriction Orders on Friday, February 4, 2021. These are in addition to the Modified Phase 2 order from January 29, 2021. The Mardi Gras Restrictions closed the parks and roads throughout the French Quarter during Mardi Gras season. These closures are from Friday, February 12, 2021 at 6:00AM until Wednesday, February 17, 2021 at 6:00AM. These are the latest of the Mayor's COVID-19 restrictions. These restrictions are specifically for Mardi Gras. Mayor has closed Louis Armstrong Park, Washington Square, and Jackson Square under these Mardi Gras Restrictions. Plaintiff seeks a declaration that the enforcement of the "Mardi Gras Restrictions" February 7, 2021 to prohibit his peaceful First Amendment activity in Louis Armstrong Park and Jackson Square, and Bourbon Street between Canal St. and Dumaine St. violates the First and Fourteenth Amendments as set forth in this Complaint; a temporary and permanent injunction enjoining the challenged enforcement of "Mardi Gras Restrictions" as set forth in this Memorandum of Law

### **ARGUMENT**

To obtain a TRO or PI, Plaintiff must demonstrate it has a strong likelihood of success on the merits, that it will suffer irreparable injury absent the order, that the balance of the equities favors the order, and that the public interest is served by the Court's issuing the order. *See MicroStrategy, Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001); *Moore v. Kempthorne*, 464 F. Supp. 2d 519, 525 (E.D. Va. 2006) ("The standard for granting either a TRO or preliminary injunction is the same."). Plaintiff easily satisfy each of these elements factually and legally. (Plaintiff hereby incorporate by reference the allegations of its Verified Complaint, and supporting affidavits filed contemporaneously herewith, as its statement of facts in support of this motion.)

This Court must weigh four factors to determine whether a preliminary injunction should be issued:

1. (1) the likelihood that the moving party will succeed on the merits;
2. (2) the extent to which the moving party will suffer irreparable harm without injunction relief;

3. (3) the extent to which the moving party will suffer irreparable harm if the injunction is issued; and
4. (4) the public interest.
5. *Liberty Lincoln-Mercury Inc. v. Ford Motor Co.*, 562 F.3d 553, 556 (3d Cir. 2009); *McNeil Nutritionals LLC v. Heartland Sweeteners, LLC*, 511 F.3d 350, 356-57 (3d Cir. 2007). The balance of factors in this First Amendment case clearly weighs in favor of granting the requested injunction.

**PLAINTIFFS HAVE STANDING TO SEEK THE ISSUANCE OF A  
TRO/PRELIMINARY INJUNCTION.**

As a preliminary matter, Plaintiff have standing to seek a TRO/injunctive relief. A city or state law enforcement agency may be enjoined from committing constitutional violations where there is proof that officers within the agency have engaged in a persistent pattern of misconduct. *Md. State Conference of NAACP Branches v. Md. Dept. of State*, 72 F. Supp. 2d 560, 564-65 (D. Md. 1999) (distinguishing case from *Lyons* where pattern and practice evidence and likelihood of recurrence evidence is present); *DeShawn v. Safir*, 156 F.3d 340, 344-45 (2d Cir. 1998) (same); *Thomas v. County of Los Angeles*, 978 F.2d 504, 507- 508 (9th Cir. 1992)

**I. PLAINTIFF ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR FIRST  
AMENDMENT CLAIM BECAUSE THE DEFENDANTS' SURVEILLANCE AND  
HARASSMENT OF PLAINTIFF ARE INTENDED TO RETALIATE AGAINST  
PLAINTIFF FOR EXERCISING THEIR FREE-SPEECH AND FREE-  
ASSOCIATION RIGHTS.**

Unlike typical preliminary injunction jurisprudence, Plaintiff notes that in First Amendment cases, it is the Defendants who carry the burden of both proof and persuasion. *Phillips v. Borough of Keyport*, 107 F.3d 164, 172-73 (3d Cir. 1997) (en banc), *cert denied*, 522 U.S. 132 (1997) (noting that when a legislative body [a school board] acts to restrict speech, that body has the burden of proving that it is acting in a constitutional manner); *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816 (2000) ("When the government restricts speech,

the Government bears the burden of proving the constitutionality of its actions”) (citations omitted).

The plaintiff is participating in First Amendment-protected activities related to the protest against the economic policies of Mayor LaToya Cantrell. Those First Amendment activities include protest parades, peaceful marches, and 33 minute Prayer Vigils. Plaintiff has dedicated his life to being the guardian of the ecosystem, championing civil rights issues, protecting the unique cultural fabric of the City of New Orleans and its citizens. Plaintiff has invested his signage, banners and advertisements for his non-profit causes. All of these gestures constitute First Amendment-protected verbal and non-verbal conduct because they are sufficiently imbued with elements of communication. *See Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly*, 309 F.3d 144, 160-61 (3d Cir. 2002) (“conduct is expressive if, ‘considering the nature of [the] activity, combined with the factual context and environment in which it was undertaken, we are led to the conclusion that the activity was sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments’”) (quoting *Troster v. Pa. State Dept. of Corrections*, 65 F.3d 1086, 1090 (3d Cir. 1995)).

#### **A. Federal Constitutional Law, Jurisdiction and the Free Exercise Clause**

The First Amendment’s Free Exercise Clause, incorporated and made applicable to state and local governments by the Fourteenth Amendment to the United States Constitution, prohibits Defendants from abridging the free exercise of religion.

#### **B. Federal Constitution and Freedom of Assembly**

The First Amendment’s Freedom of Assembly Clause, incorporated and made applicable to state and local governmental action by the Fourteenth Amendment to the United States Constitution, states that the government may not abridge “the right of the people to peaceably assemble, and to petition the government for a redress of grievances.”

The grammar of this Clause indicates that the right to peaceably assemble and the right to petition the government for a redress of grievances are two different rights. They are often seen together, especially in cases of peaceful protests of government policies. Nevertheless, the

Constitution does not recognize the right of the people “to peaceably assemble and petition the government for a redress of grievances.” Instead, it recognizes “the right of the people to peaceably assemble, *and* to petition the government for a redress of grievances.” (Emphasis added.) They are two separate rights.

The Defendants’ actions have forbidden Luke Fontana from assembly for a peaceful protest parade. Therefore, the Defendants have violated Plaintiff’s freedom of assembly.

### **C. Federal Constitution and Equal Protection of the Law**

The Fourteenth Amendment prohibits the states from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” The Defendants’ actions are unconstitutional abridgements of Plaintiff’s right to equal protection under the law, are not neutral, and specifically target Plaintiff’s and other religious groups for unequal treatment. The Defendants’ actions abridge Plaintiff’s right to equal protection because they treat Plaintiff’s differently from other individuals who would be walking on Bourbon Street on February 16, 2021. The Defendants have therefore violated Plaintiff’s right to equal protection under the law.

### **E. State Law Claims-Louisiana Law prohibits Emergency Orders from violating the U.S. or State Constitution**

The Louisiana legislature passed an Act specifically prohibiting an emergency executive order from interfering with the constitutional rights of free exercise of religion, free speech, and freedom of assembly. The State’s emergency powers are governed by The Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721 et seq. (“the Emergency Act”). In spite of all the powers that the Act gives to the Governor in that statute, it makes clear that “Nothing in this Chapter shall be interpreted to diminish the rights guaranteed to all persons under the Declaration of Rights of the Louisiana Constitution or the Bill of Rights of the United States Constitution.” La. R.S. 29:736(D). The Governor’s power in emergency matters is further curtailed by the Preservation of Religious Freedom Act, La. Rev. Stat. 13: 5231 *et seq.*

The Louisiana Legislature explicitly rejected in that Act the principles of law enunciated in the U.S. Supreme Court case of *Employment Division v. Smith*, 494 U.S. 872 (1990), in favor of the

legal test enunciated in the U.S. Supreme Court case of *Sherbert v. Verner*, 374 U.S. 398 (1963), a more stringent test.

Article I, § 8, of the Louisiana Constitution says, “No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.” Because the language of the Louisiana Constitution mirrors that of the Federal Constitution, it requires at least as much protection for free exercise of religion as the Federal Constitution does.

Moreover, Article I, Section 1 of the Louisiana Constitution states, “The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.” The right to free exercise of religion is one of the rights in the Louisiana Declaration of Rights that the state constitution says must remain “inviolate.” Thus, whatever police powers the people of Louisiana gave to their state government, they never gave the state the power to

infringe on religious liberty. The Defendants have therefore violated, and continue to violate, Plaintiff’s right to free exercise of religion under the Louisiana Constitution.

Article I, § 9 of the Louisiana Constitution says, “No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances.” This is similar to the Freedom of Assembly Clause protected by the First Amendment to the United States Constitution, but with one important difference. The First Amendment says, “the right of the people to assemble, and petition the government for a redress of grievances.” (Emphasis added.) The First Amendment’s language is conjunctive, but the Louisiana Constitution’s language is disjunctive. Thus, even if the First Amendment could be construed to be talking about one right instead of two, the Louisiana Constitution is talking about two rights, not one. Under the Louisiana Constitution, therefore, the right to peaceably assemble therefore absolutely is not dependent on petitioning the government for a redress of grievances. Like freedom of religion, Article I Section 1 of the Louisiana Constitution requires the government to keep the right to peaceably assemble “inviolate.” The State’s police powers therefore do not extent to the abridgment of freedom of assembly.

Article I, § 7, of the Louisiana Constitution says, “No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject,

but is responsible for abuse of that freedom.” Because the first sentence of this Clause is nearly identical to the First Amendment’s Free Speech Clause, it protects at least as much speech as the Federal Constitution does. Like freedom of religion, Article I Section 1 of the Louisiana Constitution requires the government to keep the right to freedom of speech “inviolable.” The State’s police powers therefore do not extend to the abridgment of freedom of speech.

Finally, the State’s emergency powers are governed by The Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721 et seq. (“the Emergency Act”) In spite of all the powers that the Act gives to the state, it makes clear that “Nothing in this Chapter shall be interpreted to diminish the rights guaranteed to all persons under the Declaration of Rights of the Louisiana Constitution or the Bill of Rights of the United States Constitution.” La. R.S. 29:736(D). If the United States Constitution and the Louisiana Constitution did not make it clear enough already, the Emergency Act itself clarifies that the State’s emergency powers cannot diminish the rights recognized in the Federal and State Constitutions. This is a clear recognition that the Governor may not make a rule that alters the law. The Governor’s power in emergency matters is further curtailed by the Preservation of Religious Freedom Act, La. Rev. Stat. 13: 5231 et seq. By using these emergency powers to abridge Plaintiff’s constitutional rights, the Defendants are violating the Emergency Act and the Preservation of Religious Freedom Act as well.

Governments are not empowered to create “First Amendment Free Zones” within their borders, like the City of New Orleans has done here. *See, e.g., Bd. of Airport Comm’rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987) (striking local government’s attempt to prohibit protected expression within a “First Amendment Free Zone.”); *United States v. Stevens*, 559 U.S. 460, 470 (2010) (government is not empowered to create First Amendment free zones with respect to certain categories of speech). “Even minimal infringements upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.” *Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009). *See also* 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* §2948.1 (2d ed. 1995) (“When an alleged constitutional right is involved, most courts hold that **no further showing of irreparable injury is necessary.**” (emphasis added)). Thus, demonstrating irreparable injury in this matter is not difficult.

Protecting religious freedom was a vital part of our nation's founding, and it remains crucial today.

### **THE BALANCE OF THE EQUITIES TIPS DECIDEDLY IN PLAINTIFFS' FAVOR.**

An injunction in this matter will protect the very rights the Supreme Court has characterized as “lying at the foundation of a free government of free men.” *Schneider v. New Jersey*, 308 U.S. 147, 151 (1939). The granting of a TRO and PI enjoining enforcement of the Mayor's “Mardi Gras Restrictions on Luke Fontana's protest parade and 33 minute Prayer Vigil will impose no harm on the City of New Orleans. Indeed, City of New Orleans “is in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions.” *Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011). *See also Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (the government “is in no way harmed by issuance of a preliminary injunction which prevents it from enforcing a regulation, which, on this record, is likely to be found unconstitutional”). But for Luke Fontana, as noted above, even minimal infringements upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief. *Legend Night Club*, 637 F.3d at 302. As such, there can be no comparison between the irreparable and unconscionable loss of First Amendment freedoms suffered by Plaintiffs absent injunctive relief and the non-existent interest the City has in enforcing unconstitutional Mayor's “Mardi Gras Restrictions.” The balance of the equities tips decidedly in Plaintiffs' favor, and the TRO and PI should issue.

### **F. THE PUBLIC INTEREST WARRANTS A TRO AND PRELIMINARY INJUNCTION.**

As the Fourth Circuit has noted, “[s]urely, **upholding constitutional rights serves the public interest.**” *Newsom ex rel. Newsom v. Albemarle Cnty. Pub. Schs.*, 354 F.3d 249, 261 (4th Cir. 2003) (emphasis added); *Legend Night Club*, 637 F.3d at 303 (“upholding constitutional rights is in the public interest”). “Injunctions protecting First Amendment freedoms are **always in the public interest.**” *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012) (emphasis

added). This protection is *ipso facto* in the interest of the general public because “First Amendment rights are not private rights [but] rights of the general public [for] the benefits of all of us.” *Machesky v. Bizzell*, 414 F.2d 283, 288–90 (5th Cir. 1969) (citing *Time, Inc. v. Hill*, 385

U.S. 374 (1967)). There is no evidence that churches are less essential than every other business that is currently allowed to be open, and “the public has a profound interest in men and women of faith worshipping together [in church] in a manner consistent with their conscience.

### **CONCLUSION**

For all of the foregoing reasons, Plaintiff respectfully request that the Court issue the TRO and PI as set forth in the Prayer for Relief in Plaintiff’s Complaint

Respectfully Submitted,

Luke Fontana

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